

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BODUM HOLDING AG, BODUM USA, INC.,
BODUM AG, and PI-DESIGN AG,

Plaintiffs,

– *against* –

STARBUCKS CORPORATION,

Defendant.

ORDER

19 Civ. 4280 (ER)

RAMOS, D.J.:

Plaintiffs (“Bodum”) brought this suit against Starbucks Corporation on May 10, 2019, alleging various claims regarding Starbucks’s recall of a Recycled French Press designed and manufactured by Bodum. Doc. 1. On September 30, 2021, Starbucks filed a letter contesting an assertion of privilege by Bodum over an email. Doc. 134. The email at issue is an email from Alain Grossenbacher, Bodum’s Creative Director, to three other Bodum employees. *Id.* The email was produced by Bodum to Starbucks as part of discovery on March 30, 2020. *Id.* One year later on March 30, 2021, Bodum sought to claw back the email on the basis of attorney-client privilege. *Id.* The parties conferred and were unable to reach resolution on the contested privilege. *Id.* Bodum also submitted a letter with their position on the issue. Doc. 137. The Court held a conference to discuss the matter on October 8, 2021. The parties then each submitted an additional letter explaining their positions, and Grossenbacher submitted a Declaration regarding the email. Docs. 142, 148.

Having considered the parties’ positions, the Court finds that the email is not privileged. Although Grossenbacher wrote the email as an outline for an upcoming meeting with his attorney, the email simply recites factual information that Grossenbacher wanted to discuss with

counsel and does not provide any mental impressions. Attorney-client privilege “only protects disclosure of communication; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” *Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981). The email was not a communication with an attorney. Instead, the email contains “only factual background information” that is “commercial or business in nature, rather than legal.” *Women’s InterArt Center, Inc. v. N.Y.C. Economic Dev.*, 223 F.R.D. 156, 160 (S.D.N.Y. 2004) (ordering production of documents). Thus, Bodum’s request to claw back the email is denied.

SO ORDERED.

Dated: October 28, 2021
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is positioned above a horizontal line.

Edgardo Ramos, U.S.D.J.